

Appl. No. : 09/737,165  
Filed : December 14, 2000

### REMARKS

By way of summary, Claims 1–10, 21, 29–33, 60–71, 74 and 75 are pending in this application. The Office Action dated March 27, 2008 rejected Claims 1–10, 21, 29–33, 60–71, and 74–75 under 35 U.S.C. § 103(a) as unpatentable over Nash (U.S. Patent No. 5,779,721) in view of Rogers (U.S. Patent No. 5,733,296). By way of the following remarks, it is believed that Claims 1–10, 21, 29–33, 65–71, and 74–75 are patentably distinguished over the cited references, and Applicant respectfully requests allowance of the pending claims.

**A. The Examiner Mischaracterizes the Notice of Panel Decision and Fails to Articulate a Proper Basis for Rejecting Independent Claims 21, 29, 65 and 68**

Applicant first notes that in paragraph one of the outstanding Office Action, the Examiner characterized the Applicant's Pre-Appeal Brief Request for Review as a request for reconsideration of the finality of the prior rejection. Office Action at page 2. The Examiner mischaracterizes the Applicant's prior request as well as the Notice of Panel Decision. The Applicant's request was for the withdrawal of the anticipation rejections based on Nash. Notice of Appeal and Pre-Appeal Brief Request for Review Filed September 27, 2007. This request was made in view of novelty rejections based on Nash raised in previous office actions including the January 18, 2007 non-final Office Action and the June 29, 2007 Final Office action. Applicant provided arguments distinguishing Nash in the April 17, 2007 Office Action Response, as well as in the September 27, 2007 Pre-Appeal Brief Request for Review. On January 11, 2008 the Notice of Panel Decision from the Pre-Appeal Brief Review reopened prosecution withdrawing the Nash rejections. Therefore, it is inaccurate for the Examiner to simply indicate that the finality of the prior action has been withdrawn. The Panel Decision clearly indicates that the anticipation rejection based on Nash is no longer appropriate.

As such, the pending March 27, 2008 Office Action again raises Nash, this time admitting that "Nash does not disclose a sensor disposed on the device in electrical communication with an indicator for indicating resistant to rotation of either to [sic] rotatable element (42) or rotatable cutter (32)." Office Action at page 3. The Office Action states that "Rogers et al teaches that it is known in the surgical art to have a sensor disposed on the device in electrical communication with a an [sic] indicator which [sic] capable of being [sic] indicating resistance to rotation of either to [sic] rotatable element [sic] rotatable cutter." *Id.* However, the

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Examiner's use of Rogers is limited to elements of Claims 1 and 60. As the Examiner specifically indicates, "Applicants' arguments with respect to claims 1 and 60 have been considered but are moot in view of the new ground(s) of rejection." *Id.*

With respect to Independent Claim 21, 29, 65 and 68, the Examiner has failed to articulate a proper basis for rejecting these claims for obviousness over Nash in view of Rogers. MPEP 706.02(j) explains that when a rejection is made under 35 U.S.C. § 103, the Examiner should set forth in the Office Action:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
- (B) the difference or differences in the claim over the applied reference(s),
- (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
- (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

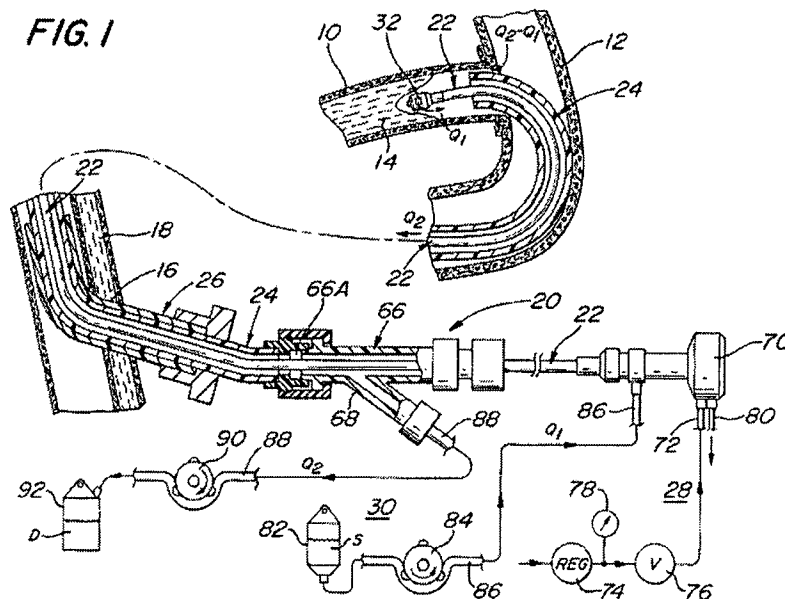
The Office Action appears to assert that the combination of Nash in view of Rogers renders obvious Claims 21, 29, 65 and 68. However, the Examiner has not articulated any teachings found in Rogers relevant to the limitations of these claims, or any proposed modifications necessary based on Rogers to arrive at the subject matter recited in these claims. In fact, the Examiner provides no explanation whatsoever explaining how these claims are rendered obvious by the combination of Nash and Rogers. The Examiner appears to have overlooked the need to articulate the basis for his obviousness rejection of Claims 21, 29, 65 and 68.

Moreover, because the previous rejections of Claims 21, 29, 65 and 68 as being anticipated by Nash were withdrawn in the Panel Decision of January 11, 2008, Applicant submits that the Examiner must articulate how a combination of Nash with Rogers overcomes the deficiencies of the Nash reference alone with respect to these claims. For the reasons explained below, and as further discussed in Applicant's arguments presented in the April 17, 2007 Response and the September 27, 2007 Request, Applicant submits that the Examiner will be unable to do so.

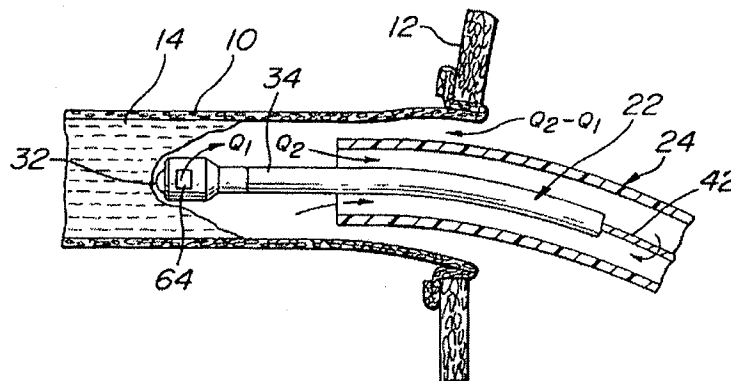
**B. §103(a) Rejection of Claims under Nash in view of Rogers**

The outstanding Office Action rejected Claims 1-10, 21, 29-33, 65-71, and 74-75 under 35 U.S.C. §103(a) as unpatentable over Nash in view of Rogers. Nash discloses a system including an instrument within a guide catheter having a working head ("e.g., a rotary impacting impeller located within an apertured shroud") and a debris extraction sub-system with a differential flow of infusate liquid to establish an unbalanced flow adjacent the working head to enable the catheter to be steered hydrodynamically and to aspirate debris from the working field of the instrument. Nash Abstract.

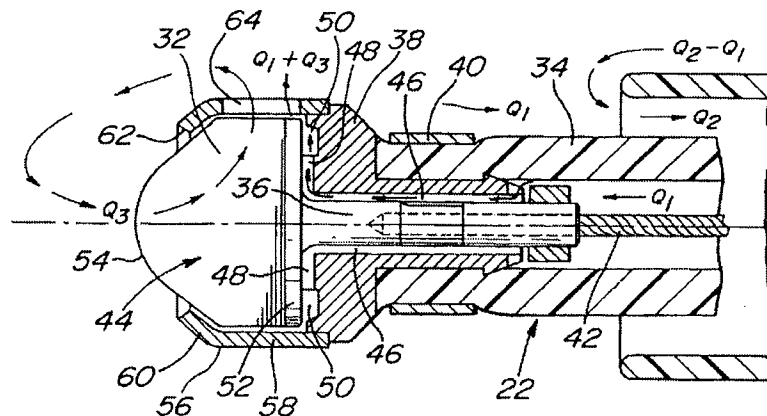
The Examiner cites an embodiment in Nash Figs. 1-3, which is provided for the Examiner's convenience below.



**FIG. 2**



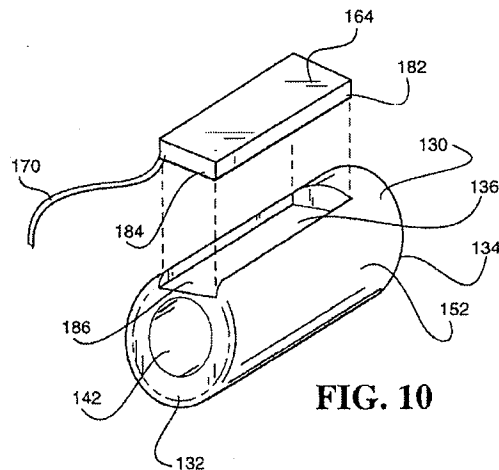
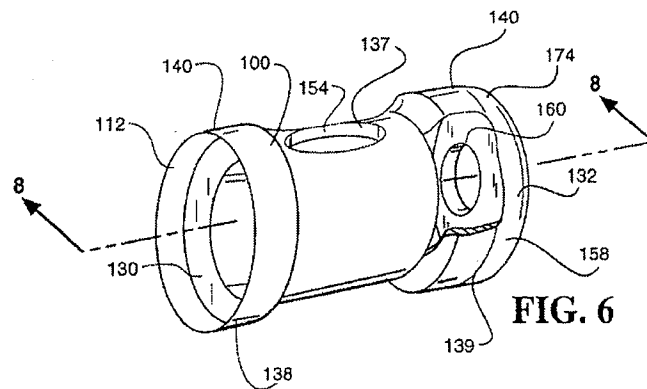
**FIG. 3**



Rogers discloses an atherectomy cutter with an ultrasonic sensor capable of generating and communicating a description of the interior of a blood vessel: "A sensor capable of generating and communicating a description of the interior of a blood vessel is employed by the present invention." Rogers Abstract and col. 10, lines 1-2. Rogers states its invention uses an ultrasonic sensor for examining the surrounding tissue: "The sensor 164 is an ultrasonic transducer which is capable of determining the density of surrounding tissues during operation of the present invention." *Id.* at col. 10, lines 3-6. Rogers further states:

The use of cutters having ultrasonic imaging sensors is now known. ... Ultrasonic imaging sensors perform various useful functions such as **safely guiding an atherectomy device through a vascular system**, for example. **Ultrasonic imaging sensors inspect the stenotic material to be cut** and have proven to be useful when employed with devices such as atherectomy catheters.

*Id.* at col. 1, lines 58-67 (emphasis added). Rogers goes on to state: “It is also desirable to provide a device which is adapted to hold a **sensor which can guide the device through the vasculature of a patient.**” *Id.* at col. 2, lines 14-17 (emphasis added). Rogers goes on to list various embodiments of the ultrasonic sensor 164 mounted on a sensor mount 130 that can be attached to a cutter torque cable, as illustrated in several Rogers figures, such as Fig. 10 reproduced below:



The sensor is oriented to view the surrounding tissue: “The opening 154 permits communication between the sensor 164 (see FIG. 9 and FIG. 10) and the environment surrounding the cutter 140. When the sensor 164 attaches with the sensor mount 130, the sensor mount 130 and the cutter 140 cooperate to protect the sensor 164 from damage, hold the sensor 164, and align the sensor 164 relative to the cutting edge 112 of the cutter 140.” *Id.* at col. 6, lines 41-47. “The sensor 164 communicates with an operator electronically via a wire 170 (partially shown) included with the sensor 164. The wire 170 extends from the sensor 164, through the opening 160 (see FIG. 6) and

along the atherectomy catheter 102 (see FIG. 1) to appropriate signal processing equipment.” *Id.* at col. 7, lines 21-26.

**1. All Claim Rejections Fail to Provide Proper *Graham* Factual Inquiries and Fail to Articulate Findings under the *KSR* Examination Guidelines**

The Examination Guidelines for Determining Obviousness Under 35 U.S.C. § 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (“Examination Guidelines”), which were published in the Federal Register Vol. 72, No. 195 (Docket PTO-P-2007-0031) on October 10, 2007, apply the Supreme Court’s decision in *KSR Int’l. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007) with regard to the issue of obviousness under 35 U.S.C. § 103(a) in relation to prior art. Applicant submits that the outstanding Office Action fails to satisfy the Examiner’s burden in establishing an obviousness rejection.

Under the Examination Guidelines, and as reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.* Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

The Examination Guidelines confirms the role of Patent Office personnel as factfinders:

When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.

72 Fed. Reg. 57527 (Oct. 10, 2007).

The Examination Guidelines further provide that “Once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.” *Id.* “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* at 57528-57529

(internal citations omitted). Under the Examination Guidelines, a rejection must offer specific support for the following rationales Examiners may use to show obviousness:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

*Id.* at 57529.

The pending March 27, 2008 Office Action fails to set forth the level of ordinary skill in the pertinent art, or who qualifies as one of ordinary skill in the field. Applicant submits that without such a finding, the Examiner’s combinations are improper, as the Examiner has not established that the references proposed by the combinations would be known to one of ordinary skill in the art, nor that one of ordinary skill would have the requisite knowledge and ability to make the desired combinations.

Moreover, the Examiner has failed articulate specific rationales for the proposed combinations of references, and has failed to provide explicit explanations supporting the obviousness rejections. The Examiner summarily concludes that “It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Nash device with sensor in electrical communication with a [sic] an indicator that having [sic] the capability of indicating resistance to rotation of either to [sic] rotatable element (42) or rotatable cutter (32) as taught by Rogers et al in order to enhance the rotation of the rotatable element or the rotatable cutter during operation.” Office Action at page 3. The Examiner fails to identify: (1) the knowledge one skilled in the art would possess, (2) what modifications the skilled person would

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need to make to combine the prior art references, and (3) whether that skilled person would have a reasonable expectation of success. Accordingly, Applicant submits that the Examiner's obviousness rejections are improper. More specific details relating to these missing inquiries and missing articulated findings are discussed in more detail below, along with Applicant's reasoned statements explaining why Applicant's claims are nonobvious over the cited art.

**2. Independent Claim 1 is not rendered obvious by Nash in view of Rogers**

Claim 1 recites, among other things, "a sensor on the device in electrical communication with an indicator, for indicating resistance to rotation of either the rotatable element or rotatable cutter." The pending March 27, 2008 Office Action admits that "Nash does not disclose a sensor disposed on the device in electrical communication with an indicator for indicating resistant to rotation of either to [sic] rotatable element (42) or rotatable cutter (32)." Office Action at page 3. The Office Action states that "Rogers et al teaches that it is known in the surgical art to have a sensor disposed on the device in electrical communication with a an [sic] indicator which [sic] capable of being [sic] indicating resistance to rotation of either to [sic] rotatable element [sic] rotatable cutter." *Id.*

Contrary to the Examiner's assertions, Rogers does not disclose, teach, or suggest a sensor disposed on the device in electrical communication with an indicator which is capable of indicating resistance to rotation of either a rotatable element or a rotatable cutter. Rogers does not discuss or even contemplate measuring or monitoring resistance to rotation for the cutter, nor using a sensor to sense any resistance to any rotation. Instead, Rogers contemplates uses of an ultrasonic sensor to generate and communicate a description of the interior of a blood vessel, capable of determining the density of surrounding tissues during operation of the present invention, which can guide the device through the vasculature of a patient. Rogers' sensor is directed outward at the tissue and does not measure any resistance to rotation. Accordingly, the Examiner's combination of Rogers with Nash would not produce the invention recited in Applicant's Claim 1.

Moreover, the logic behind the Examiner's asserted motivation to combine Rogers with Nash is flawed. The Examiner argues that the combination would be obvious "in order to enhance the rotation of the rotatable element or the rotatable cutter during operation." Office



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Action at page 3. Rogers' sensor has nothing to do with enhancing or in any way adjusting rotation of the cutter described in Rogers. As discussed above, Rogers' sensor is provided to generate and communicate a description of the interior of a blood vessel. One skilled in the art would therefore not find it predictable or have any reasonable expectation of success to combine Rogers with Nash to provide the desired result proposed by the Examiner.

For the foregoing reasons, Applicant respectfully submits that the Nash and Rogers references, alone or in combination, fail to disclose, teach, or suggest any "sensor on the device in electrical communication with an indicator, for indicating resistance to rotation of either the rotatable element or rotatable cutter," as recited in Claim 1. Therefore, it is respectfully submitted that Nash and Rogers do not teach or suggest all the limitations of Claim 1, and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

**3. Independent Claim 21 is not rendered obvious by Nash in view of Rogers**

The Office Action states, regarding a limitation of Claim 21, "Nash discloses in figures 1-3, . . . an aspiration lumen (at Q2 of fig. 3) . . . wherein the cross-sectional area of the aspiration lumen (Q2) is being at least about 35% of the cross-sectional area of the tubular body (24)." Office Action, page 2. However, there is no teaching in Nash for an aspiration lumen that is sized to be "at least 35% of the cross-sectional area of the tubular body." The Office Action fails to identify the disclosure, specific teaching or suggestion in Nash in support of this rejection, and Applicant was unable to identify any such support.

It appears the Examiner is asserting that the space between the outer surface of the catheter (22) and the inner surface of the guide catheter (24) defines an aspiration lumen (Q2). In order to determine the cross-sectional area of the space labeled Q2 it is necessary to have both dimensions. The Nash disclosure includes an outer dimension for the aspiration lumen: "As best seen in FIG. 4 the atherectomy catheter includes a jacket 34 which is formed of any suitable material, e.g., plastic, and has a small outside diameter. In the preferred embodiment shown herein, the outside diameter of the jacket 34 is approximately 1.5 mm (5 French)." Nash at col. 6, lines 42-46. Although Nash discloses a range for outer diameters for the guide catheter (24), it does not disclose any inside diameter for the lumen inside the guide catheter (24): "the guide catheter 24 is of any conventional construction. In the preferred embodiment shown in FIG. 1 it

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is a 10F to 12F catheter.” *Id.* at col. 8, lines 10-12. As is recognized in the art, "French size" is a scale used to identify the outer diameter of a catheter. French scale units are obtained by multiplying the outer diameter of the catheter in mm by 3. Likewise, multiplying the French size by .33 will give the outer diameter of the catheter in mm. Nash discloses no inside dimension for the guide catheter (24), therefore it is impossible to determine the cross-sectional area of the aspiration lumen (Q2).

Furthermore, while some figures illustrate a space (“Q2”) between the atherectomy catheter (22) and the guide catheter (24), there is no disclosure, teaching, or suggestion that it comprises at least 35% of the cross-sectional area of the tubular body. Nash does not state that the drawings are to scale, and “when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.” See M.P.E.P. § 2125 (citing *Hockerson-Halberstadt, Inc. v. Avia Group Int’l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000)). Thus, support for the rejection cannot be based solely on the drawings, and Applicant respectfully submits that there is no written support for the rejection.

Rogers fails to provide any support to cure the defect of Nash with respect to at least Claim 21. Therefore, it is respectfully submitted that Nash and Rogers, alone or in combination, do not teach or suggest all the limitations of Claim 21, and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

**4. Independent Claim 29 is not rendered obvious by Nash in view of Rogers**

The Office Action states, regarding a limitation of Claim 29, “Nash discloses in figures 1–3, ... a rotatable cutter (32) disposed at the distal end of said tubular body (22, 24).” Office Action at page 2. However, Claim 29 recites, among other things, “a rotatable cutter disposed within the tubular body at the distal end of the body.” The Nash working head (32) (“e.g., a rotary impacting impeller located within an apertured shroud”) is shown in all Nash figures as being housed in and extending distally beyond a cylindrical shroud (56), not the tubular body (22). Nash Abstract and Figures 1-5. Nash states: “The working head is located within a cylindrical shroud 56 (FIGS. 3 and 4) fixedly mounted on the front of the bushing 38. The shroud 56 includes a cylindrical sidewall portion 58 and a generally conical distal wall portion 60

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terminating in a circular opening 62 in the distal end thereof. ... The distal arcuate portion of the impeller tip 54 projects out of the central or front opening 62.” Nash at col. 7, lines 14-21. Thus, the Nash working head (32) is not “disposed within the tubular body.” Applicant respectfully submits that the Nash reference does not disclose, teach, or suggest any “rotatable cutter disposed within the tubular body” as recited in Claim 29.

Furthermore, the Office Action states, regarding a limitation of Claim 29, “Nash discloses in figures 1–3, . . . an aspiration lumen (at Q2 of fig. 3).” Office Action at page 2. The Examiner asserts that the space between the outer surface of the catheter (22) and the inner surface of the guide catheter (24) defines an aspiration lumen (Q2). However, Claim 29 as amended recites, among other things, “an axially extending annular aspiration channel defined by and located between the rotatable element and the tubular body.” As defined by the Examiner, Nash has an axially extending annular aspiration channel (Q2) extending between the atherectomy catheter 22 and the guide catheter 24. This channel does not extend between the Nash rotatable element (42) and the tubular body (22 or 24). Thus, Applicant respectfully submits that the Nash reference does not disclose, teach, or suggest “an axially extending annular aspiration channel defined by and located between the rotatable element and the tubular body” as recited in Claim 29.

Rogers fails to provide any support to cure the defect of Nash with respect to at least Claim 29. Therefore, it is respectfully submitted that Nash and Rogers, alone or in combination, do not teach or suggest all the limitations of Claim 29, and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

**5. Independent Claim 60 is not rendered obvious by Nash in view of Rogers**

Claim 60 recites, among other things, “a sensor on the device in electrical communication with a motor control circuit, wherein the motor control circuit is capable of receiving a signal from the sensor for indicating an operating condition based upon resistance to rotation of either the rotatable element or rotatable cutter and wherein the motor control circuit is capable of disengaging the motor rotation from the cutter in the event the operating condition indicates an overload condition.” The Examiner contends that Nash provides that “... the motor control circuit (70) is capable of disengaging the motor rotation from the cutter (32) where indicates an overload condition (col. 8, line 20 to col. 9, line 37).” However, the passage cited neither

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discusses nor supports the Examiner's contention. Furthermore, Nash does not disclose disengaging the motor rotation from the cutter in any situation. See Applicant's Response Filed April 17, 2007 at 11-12.

The pending March 27, 2008 Office Action admits that "Nash does not disclose a sensor disposed on the device in electrical communication with an indicator for indicating resistance to rotation of either to [sic] rotatable element (42) or rotatable cutter (32)." Office Action at page 3. The Office Action states that "Rogers et al teaches that it is known in the surgical art to have a sensor disposed on the device in electrical communication with a an [sic] indicator which [sic] capable of being [sic] indicating resistance to rotation of either to [sic] rotatable element [sic] rotatable cutter." *Id.* For the reasons discussed above with respect to Claim 1, Rogers does not disclose, teach, or suggest a sensor on the device in electrical communication with a motor control circuit, wherein the motor control circuit is capable of receiving a signal from the sensor for indicating an operating condition based upon resistance to rotation of either the rotatable element or rotatable cutter and wherein the motor control circuit is capable of disengaging the motor rotation from the cutter in the event the operating condition indicates an overload condition. Rogers does not discuss or even contemplate measuring or monitoring resistance to rotation for the cutter, nor using a sensor to sense any resistance to any rotation. Instead, Rogers contemplates uses of an ultrasonic sensor to generate and communicate a description of the interior of a blood vessel, capable of determining the density of surrounding tissues during operation of the present invention, which can guide the device through the vasculature of a patient. Rogers' sensor is directed outward at the tissue and does not measure any resistance to rotation. Rogers also does not discuss any relationship between its ultrasonic sensor and a motor control circuit.

The Examiner's combination of Rogers with Nash would not produce the invention recited in Applicant's Claim 60. Moreover, as discussed with respect to Claim 1 above, one skilled in the art would not find it predictable or have any reasonable expectation of success to combine Rogers with Nash to provide the desired result proposed by the Examiner. For the foregoing reasons, Applicant respectfully submits that the Nash and Rogers references, alone or in combination, fail to disclose, teach, or suggest any "sensor on the device in electrical communication with a motor control circuit, wherein the motor control circuit is capable of

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receiving a signal from the sensor for indicating an operating condition based upon resistance to rotation of either the rotatable element or rotatable cutter and wherein the motor control circuit is capable of disengaging the motor rotation from the cutter in the event the operating condition indicates an overload condition,” as recited in Claim 60. Therefore, it is respectfully submitted that Nash and Rogers do not teach or suggest all the limitations of Claim 60, and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

**6. Independent Claim 65 is not rendered obvious by Nash in view of Rogers**

Claim 65 recites, in part, an elongated tubular body, “the elongated tubular body defining an aspiration channel . . . a control disposed at the proximal end of the tubular body, the control including a connecting hub, the connecting hub coupling the tubular body to the control such that the tubular body may rotate relative to the control during operation.” Nash, however, fails to teach a hub that permits rotation relative to the control and that is disposed on the proximal end of the tubular body. The Examiner identifies a “control or hub (66)” as equivalent structures. Office Action at p. 2. Nash describes “a conventional Y connector 66 . . . [that] has one input leg including a Touhy-Borst adjustable hemostasis valve 66A through which the atherectomy catheter 22 passes. The other input leg, i.e., the angled leg 68, is connected to the aspiration portion of the debris removal sub-system 30.” Nash at col. 8, lines 12-18. Nash does not disclose, teach or suggest that the Y connector 66 is rotatable with respect to itself, and the Examiner’s Office Action fails to identify any structure in Nash whatsoever corresponding to the recited claim limitations.

Rogers fails to provide any support to cure the defect of Nash with respect to at least Claim 65. Therefore, it is respectfully submitted that Nash and Rogers, alone or in combination, do not teach or suggest all the limitations of Claim 65, and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

**7. Independent Claim 68 is not anticipated nor rendered obvious by Nash**

The Office Action rejects independent Claim 68 as being anticipated under 35 U.S.C. § 102(e) by Nash. Applicant respectfully submits that the Office Action fails to identify any teaching or suggestion from Nash upon which this rejection is based. Claim 68 recites, among

other things, a “cutter capable of axial displacement relative to the control during operation.” Nash does not disclose, teach, or suggest a cutter that is capable of axial displacement with respect to a control during operation. In contrast, Nash states, “[t]he working head is located within a cylindrical shroud 56 (FIGS. 3 and 4) fixedly mounted on the front of the bushing 38.” Nash col. 7, lines 14-16. The Nash cutter has a specific position within the shroud 56 to create a differential flow of infusate liquid to establish an unbalanced flow adjacent the working head to enable the catheter to be steered hydrodynamically and to aspirate debris from the working field of the instrument. Nash Abstract. Specifically, Nash states, “[t]he rotation of the working head about its longitudinal axis produces a powerful toroidal shaped vortex flow Q3 in the fluid contiguous with the working head. This flow Q3 circulates by entering into the shroud through the central or front opening 62 and exits out through the side window 64 as shown in FIG. 3.” Nash col. 7, lines 35-40. If the Nash cutter is axially advanced or withdrawn, the device may not perform the intended function.

Rogers fails to provide any support to cure the defect of Nash with respect to at least Claim 68. Therefore, it is respectfully submitted that Nash and Rogers, alone or in combination, do not teach or suggest all the limitations of Claim 68, and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

**8. Dependent Claims 2-10, 30-33, 61-64, 66-67, 69-71 and 74-75 are not rendered obvious by Nash in view of Rogers**

Claims 2-10, 30-33, 61-64, 66-67, 69-71, and 74-75, which depend from Claims 1, 21, 29, 60, 65 and 68, are believed to be patentable for the same reasons articulated above with respect to Claims 1, 21, 29, 60, 65 and 68, and because of the additional unique features recited therein. Accordingly, it is respectfully submitted that Nash and Rogers, alone or in combination, do not teach or suggest all the limitations of these claims or the independent claims from which these claims depend, and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

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**C. No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

**D. Certain Co-Pending Applications of Assignee**

Applicant wishes to draw to the Examiner's attention to the following co-pending applications of the present application's assignee.

Serial Number	Title	Filed	Matter Reference
10/178,933	ROTATIONAL ATHERECTOMY SYSTEM WITH STATIONARY CUTTING ELEMENTS	June 20, 2002	ENDICOR.5CP2CD
11/490,620	NEURO THROMBECTOMY CATHETER	July 21, 2006	ENDICOR.5CP3C1C
11/754,863	NEURO THROMBECTOMY CATHETER	May 29, 2007	ENDICOR.5CP3CC2

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**E. Conclusion**

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. Applicant has made a good faith effort to respond to the outstanding Office Action. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is cordially invited to contact the Applicant's attorney, at the telephone number below, to resolve any such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 6-25-08

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